

REMARKS

The drawings have been objected to on the grounds that Figures 1 and 3 show reference numeral 14 pointing to an opening but refer to it as a "planar surface". By this amendment the numeral 14 in line 8 of page 3 has been changed to the numeral 12. With that change, the specification is clear that the planar surface is denominated 12 and the hook or cutout in that surface is denominated 14. It is respectfully submitted that this reading is consistent with Figures 1 and 3 of the drawing. The drawings require amendment to add numerals set forth in the text but not previously included in the drawings and a proposed amended drawing is attached.

Claim 3 was rejected as indefinite under 35 U.S.C. §112 because of lack of an antecedent basis for the limitation "the base of the stud" in the claim. Claim 3 is dependent on claim 1, and by this amendment claim 1 has been changed to define the stud as having a base integral with one of either the first tab portion or the third tab portion.

Claims 1, 2 and 4-7 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,811,977 to Swift et al. The Swift patent is not intended to support an article of merchandise from a rod but is rather a seal for a container having a staple 42 extending from the surface of a hasp 44 as illustrated in Figure 2. The stud 24 formed on the support body 14 is passed through the slot 46 in the staple 42 and is passed through the opening 20 in the support member 12 to lock the hasp. In the device of the present invention, the stud 20 is extended through the aperture 32 to form a loop in the second tab portion 28 adapted to retain an article of merchandise. The opening 14 in the planar surface 12 is then suspended on a rod so that the article of merchandise can hang down from the rod.

This distinction has been emphasized by the addition of the whereby clause to claim 1. The device of the present invention as defined by claim 1 thus has a completely different purpose and operates in a completely different manner than the device of Swift et al. Swift's device could not be used in the manner of the present invention for a number of reasons. First, the planar surface totally lacks an opening that might be used to suspend it from a rod.

Claims 1, 3 and 9 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,708,835 to Bienz.

The same factors that distinguish Swift et al. from claim 1 are applicable to Bienz. Bienz is not intended for use as a hanger for suspending an article of merchandise from a rod and lacks structure which would allow it to be used for this purpose. It totally lacks a planar surface adapted to receive printed indicia thereon and having an opening for suspending the hanger from a rod. The whereby clause further distinguishes the structure of Bienz from the claimed invention.

Claims 8, 10-12 and 14-17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Swift et al. as applied to claim 1. Each of these claims includes the limitation that the ratio of thicknesses of the first tab portion to the second tab portion to the third tab portion are in the range of 1.5-3.5:1:1.3-2.5. The Examiner does not cite any art which discloses these ratios or even structures which might appear to have proportions generally constant with these ratios. Rather, the Examiner merely asserts that it would have been obvious to one of ordinary skill in the art to optimize the design of the device with the claimed ratio. The Examiner's suggestion that choice of any ratio of thicknesses between the various tab members would be obvious, and that accordingly no invention can lie in selection of a particular range of ratios, ignores the realities of the art of design. Certainly a structure could be created in which the first, second and

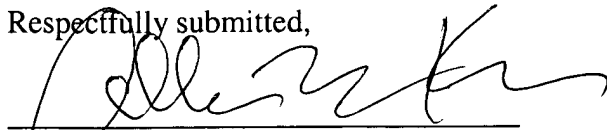
third tab portions all have the same thickness. It would be reasonable to argue that that is the obvious design choice. However, the present inventor has carefully analyzed the proper operation of the inventive device and arrived at a particular ratio of thicknesses he believes achieves a far superior product to the obvious choice. The particular ratio defined in these claims balances the desirability of thickness to inhibit theft with sufficient flexibility to achieve the looped configuration in which the device operates and the particular requirements required to discourage disengagement of the stud from the aperture. The claimed design provides the strong base for the stud while allowing the stud to flex sufficiently to achieve insertion in the aperture. While the design criteria which involve the choice of ratios can be discerned from a retroactive analysis of the invention as described in the present application, the art cited by the Examiner does not provide any motivation to design a hanger having the claimed features and thickness ratios. *In re Lintner*, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972) requires that the Examiner establish a *prima facie* case of obviousness by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the claimed structure, including the thickness limitations involved in the present claims. It is respectfully submitted that the present rejection does not constitute such a *prima facie* case of obviousness.

The same arguments apply to the rejection of claims 10, 13 and 18 as unpatentably obvious over Bienz.

With respect to claims 9 and 18, there is no suggestion in the prior art of a structure needing the defined claim ratio wherein the first tab portion thickness is greater than the third tab portion thickness.

Reconsideration and allowance are accordingly respectfully solicited.

Respectfully submitted,



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